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OBJECTIONS

Humbly offer'd

~~1608~~ 1698

Against passing the BILL, 1608/5988

Intituled,

*A Bill for the more Easy and Speedy
Recovery of small Debts,*

Into a LAW.

By JOHN MALLORY Gent.

Pro Patria & Lege.

L O N D O N :

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OBJECTIONS

Presented to the

Assembly of the State of New York

in

the year 1869

by

JOHN W. ALLEN

of the County of New York





OBJECTIONS

Humbly offer'd

Against passing the BILL,

Intituled,

*A Bill for the more Easy and Speedy
Recovery of small Debts, into a
Law.*



BEFORE I enter into the
Reasons I propose to lay
down against this Bill, stiled,
*A Bill for the more easy
and speedy Recovery of small Debts*, I
beg leave to examine what must be the
Construction of the Words, *Easy and
Speedy Recovery*, in the Place where
they stand, viz. the Title of the Bill.

B

AND

AND I must likewise here beg Leave to observe, that not only Suits for Debt or Damages, for Money, Goods, &c. are to be compriz'd under the Direction of this Law, but several other Actions, as Trover, Detinue, Account, Covenant, Trespass, which does not concern the Title of Land, Actions upon the Case for Wrongs, and indeed all other Actions, except those in the said Bill excepted, which are those of Trespass, where the Title does come in question, Actions of Slander, and Assault and Battery.

BUT as Suits for the Recovery of Debts (whether they consist in the Sum demanded, or Damages) are the Suits for which the Bill seems to be for the most part calculated, I shall here confine myself to them only, as they are indeed most considerable, with respect to the Welfare of the Nation in general.

I SUPPOSE it will be granted me, that by the Words *Easy and Speedy Recovery*, is meant such a Means of recovering small Debts to be made use of, as
shall



shall, from the Nature and Practice of them, procure the Suitor his Debt due to him, not only with less Expence and Trouble, but also that the Suitor shall not be so long delay'd in the Recovery of his just Debt thereby, as by the ordinary Proceedings at Common Law.

Now if I shall make appear beyond all Contradiction these two following Propositions to be true and undeniable, *viz.*

FIRST, That the Method here proposed by this new Bill will be more expensive and troublesome to the Suitor, than the ordinary Method of Proceeding in the common Law;

SECONDLY, That the Method here proposed by this Bill will bring greater Delay to the Suitor in the Recovery of his Debt, besides the Danger of never getting his Debt at all;

THEN I think it will not be material to my present Purpose, to animadvert any further on this Bill, by shewing the

many Contradictions and Absurdities that will thereby be naturally introduced, or to mention all the Inconveniences and Difficulties that will unavoidably arise, should this Bill pass into a Law.

BUT were it true that the Means here proposed are likely to be less expensive, (for that they are either less troublesome or more speedy, I deny, and will prove the contrary,) yet I shall here shew that this Bill, should it pass into a Law, that Law will be so prejudicial, as that no Nation whatsoever would abrogate an old Law that had been handed down to them by their Ancestors for above a thousand Years, (though it may have some adjunct Mischiefs attending it,) to introduce a new one that carries in it, *Fronte patente*, a Number of certain Inconveniences, besides the ill Consequence that may arise from such Innovations, which human Policy cannot foresee.

ONE Thing I will venture to say, and endeavour to prove, That this Bill, should it pass into a Law, will be as effectual a
Remedy

Remedy for what it is intended to cure, as beheading is for the Tooth-Ach ; inasmuch as it will cut off all Suits whatsoever for those Sums which it is intended to be applicable to ; for no Man will sue, when he knows that the Moment he begins his Suit, he adds to his Debt, with almost a Certainty never to receive it.

BUT to my first Proposition: That the Means here proposed by this new Bill will be more expensive and troublesome to the Suitor than the ordinary Proceedings at Common Law.

AND here it will be necessary for me to shew what are the Expences the Suitor is put to in the Recovery of his Debt, by the present Practice of the Common Law.

FIRST, In Judgments by Default, that is, where the Plaintiff has set forth the Nature and Quantity of his Demands; which being unanswered, the Plaintiff takes his Judgment by Default, the Costs of which, without any Thing extraordinary to increase them, are, I think,	l. s. d. 07 10 00
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SECONDLY,

SECONDLY, where the Defendant hath some Defence to make, by shewing to the Court that the Plaintiff never had any such Demands, or that if he had, the same were answer'd and paid; and this he does by Proof on a Trial, whereon, if it is found that his Plea was to no purpose, for that the said Plaintiff hath such Demands upon the Defendant unanswered, the Verdict is against him; and the Costs are generally, I think, unless, as I said before, there is something extraordinary to increase them,

l. s. d.

14 10 00

I SHALL not here distinguish between the several Courts of *Westminster*, as to their several Allowances for Costs; for that they vary so little from each other therein, that it will not be material to my present Purpose to do it.

HOWEVER, since the Occasion of bringing in this Bill is for the most part, as I apprehend, levelled at Attorneys, upon a Supposition of the great Profit they get,

I had

d. I had once thought it proper at the End of these Sheets to shew how little of all this falls to the Attorneys Share; but that I might be thence esteemed a Person interested in the present Question, who declare I hereby mean and desire nothing by the Trouble I have taken, but to prevent the Ruin of my Country; and I hope, if I make out what I have above proposed to do, the Clamours for passing this Bill will entirely cease.

BUT before I proceed to my first general Proposition, I must beg Leave to ask the Meaning of these Words, *It shall and may be lawful to and for the Judges of Assize, and Nisi Prius, &c. to hear and determine in a summary Way, by English Bill or Petition, viz.* Whether this new Way of recovering Debts is to be by Bill, or Petition, or by neither, at the Discretion of the Suitor? If so, I should think myself obliged to take but very little Pains further to prevent its passing into a Law: Let it but give that potential Qualification to the Suitor of using it, or not using it, at his own Discretion, and then let them pass

pafs it if they will, I am fatisfy'd no Body will make ufe of it twice, that has a Power to let it alone.

HOWEVER, I think that Law which abrogates another that has been practifed for fo many hundred Years, in a neceffary Form, ought to prefcribe fome other Method of Practice in a precise and very particular Manner ; but this Bill does not mark out how this Law fhall be made ufe of any further than in the general, by Bill or Petition in *Englifh*, and not written on Parchment : Yes, further, that there may be an Appeal, and that it fhall be written in a plain and ufual Character, and not in *Court-Hand* ; fo there feems to be a pointed Refentment to *Latin, Parchment*, and *Court-Hand* ; and I wifh half the Quarrel is not at that fame *Court-Hand*.

IF this new-invented Way of fuing is to be by Petition, I muft beg Leave here to obferve what my Lord *Cook* fays, fpeaking of the Alterations that had been made to the Common Law
by

by those Laws, entitled, *Reipublicæ Le-*
ges, and others *Statuta Regalia*, which
were so loosely knit together, says he,
that not a Fragment did at that Time
remain. He tells you, " That when
 " Cardinal *Wolsey* at last, which must
 " mean, after making use of those Laws,
 " perceived untrue Surmises and faint
 " Complaints, for the most part, of such
 " poor People as laded him with Peti-
 " tions, he then waxed weary of hear-
 " ing their Causes, and ordained by the
 " King's Commission divers Under
 " Courts to hear Complaints by Bill of
 " poor People: The one was kept in
 " *Whitehall*; the other before the King's
 " Almoner, *Dr. Stokesley*, a Man that
 " had more Learning than Discretion to
 " be a Judge; the third was kept in
 " the Lord Treasurer's Chamber, beside
 " the Star-Chamber; and the fourth at
 " the Rolls in the Afternoon. These
 " Courts were generally haunted for a
 " Time; but at last the People perceiv'd
 " that much Delay was used in these
 " Courts, and few Matters ended; and
 " when they were ended, bound no
 " Man by the Law. Then every Man
 C " was

“ was weary of them, and resorted to
 “ the Common Law, but *tractent fa-*
 “ *brilia fabri* ; and yet it were to be
 “ wish’d that they had kept themselves
 “ within their proper Element, for per-
 “ adventure with wise Men, some of
 “ them have reaped the Reward of
 “ those that are not believed when they
 “ say the Truth.”

THE Use that I make of this Quota-
 tion, is to shew the Impracticability of
 these Suits to be determin’d by Petition ;
 for if Plaintiff and Defendant, on a Pe-
 tition, are by this Law to have a Liber-
 ty of telling their own Stories in a sum-
 mary Way, which it seems was meant
 by the Bill ; for that among the Fees in-
 tended to be established at the End of
 the Bill, there is an Item for instructing
 Counsel, if any ; which signifies that it
 may be heard without Counsel ; then I
 am satisfied that those Countrymen, who
 are very fond of their own Manner of
 telling their Case, and think no Body
 can tell it for them better than them-
 selves, added to this that thereby they
 save a Fee to Counsel, will never give
 Coun-

Counsel any Occasion to go the Circuits ; And indeed the Feazours of this Bill apprehended, and perhaps intended that to be the Consequence ; for in another Item upon Appeals is a Blank for a Fee to Counsel, (if any appear ;) so that they were conscious, should this Bill pass into a Law, very few or no Gentlemen at the Bar would think it worth while to attend the Circuits, and appear there to expect Business from those Appeals.

AND should every Plaintiff and Defendant set out and defend their Cases in that prolix and impertinent Manner which every Body knows will be so, if they are to be their own Advocates, the Judges will have nothing else to do, were the Time of the Assizes to be enlarged to a Fortnight at every Place, but to hear the Stories, *Pro* and *Con*, of Debtor and Creditor, and the Quarrels and Squabbles that will arise between them. What a Charge and Confusion will this bring upon the poor Country People ? Some must attend a Week, others a Fortnight, before their Causes can come on by Petition ; and all the while,

perhaps, some forty Miles from Home, and at a Place which, by the Concourse of the Multitudes of People who will be oblig'd hereby to attend their own Suits, must be very dear; their Business of Farming, others of Shop-Keeping, all the while neglected; so that there will be none but had rather lose their Debts, than be at the Trouble of suing in this troublesome and expensive Manner. But I can never suppose that the Honourable House of Commons intended that this Suit should be by Petition; and some Reason there is to think they themselves thought this Manner of Suit would be a little inconsistent with the Ease of the Subject, inasmuch as they worded their Bill in the Disjunctive, *viz. by Bill or Petition*, preferring the first of these to the latter; therefore I shall, as to the Method of suing, confine myself to the Suit by Bill, to shew that the same will be more expensive and troublesome, than by the ordinary Proceedings at Common Law.

THIS

THIS Bill must contain the Nature of the Complainants Case ; and as it is to be in *English*, and to shew all that the Plaintiff has to charge the Defendant with, because he may know every Particular of what to answer ; therefore I take it for granted, it must be longer than common Declarations ; and I'll set it at fifteen Copy Sheets, and I dare say the Honourable House cannot apprehend that eight Pence a Sheet is too much for the Attorney for drawing this Bill, who shall sign it into the Bargain, and that will come to

l. s. d.

00 10 00

THIS Bill must be engrossed on Paper, (for there seems to be an Antipathy to Parchment,) and at four Pence a Sheet, which I hope they will not think too much, it comes to

00 05 00

AND

AND take one Place with } *l. s. d.*
 another, we'll say that the
 Attorney goes twenty Miles
 to have this Bill endors'd,
 and I am sure some live
 thirty, others forty Miles
 from the Clerk of the Peace;
 and what he deserves for his
 Time, Horse-Hire, and Ex-
 pences, I'll leave to any
 one of impartial Judgment.

HE cannot pay less than }
 two Shillings for this Sum-
 mons to the Clerk of the
 Peace, who consequently
 must keep Books of Entry
 of such Summons, that } *oo 02 oo*
 there may be no Fraud, and
 a poor Defendant harras'd
 to the Assizes upon a ficti-
 tious Summons,

THIS

THIS Summons must be copied and serv'd; and suppose for the Copy of this Summons we charge eight Pence for the Service, one with another, six Shillings and eight Pence; and some must go, perhaps, twenty Miles to serve it, others more, unless you'll put the Plaintiff to go twenty or thirty Miles to pick out an Attorney, because he lives near the Defendant, that comes to

l. s. d.

00 07 04

AN Affidavit must be made of the Service, which as there must be no Stamp, the Drawing and Engrossing I'll set at two Shillings; the Person impower'd must have something for swearing, which ought not to be less than a Justice of the Peace's Clerk has, viz. one Shilling, so that is,

00 03 00

THE

THE Plaintiff, he must } *l. s. d.*
 bring his Witnesſes, whether
 the Defendant appears or
 no, or whether the Defen-
 dant controverts the Debt or
 no, inasmuch as the Cause
 is to be heard at the Affizes
 when the Proceſs is return-
 able; ſo that the Expences
 for them is not to be here
 inserted, becauſe of the dif-
 ferent Diſtances where they
 live from the Town where
 the Affizes are held. }

AND if the Defendant
 doth not appear, yet if the
 Plaintiff comes there, and
 makes out his Caſe, and
 proves his Demands, he
 ought to have ſome Judg-
 ment or Decree for the ſame ;
 the Charges of which Judg-
 ment or Decree, for the
 Drawing, Engroſſing, En-
 rolling, and Docquetting,
 I'll leave to the Honourable
 Houſe to appoint. }

THEN

d. THEN there must be an Execution on this Decree, which when executed, and the Sheriff satisfied, I dare say will not be done at less Expence than by the present Practice.

SUPPOSING the Defendant	<i>l.</i>	<i>s.</i>	<i>d.</i>
doth plead, and controvert			
the Plaintiff's Demands, the			
Cause must be put down in			
the Judge's Paper, and the	00	12	00
proper Officer must have			
something for this ; at pre-			
sent 'tis twelve Shillings,			
so I'll here insert it,			

THE Witnesses must be			
compell'd to appear by some			
Writ or Mandate, under some			
Penalty ; for every Plaintiff's			
Witnesses are not always,			
nay, very seldom, Volun-	00	05	00
teers ; sometimes they are			
the Defendant's own Ser-			
vants, so I'll set that Sub-			
pœna or Mandate at			

THE Copy at,	00	01	00
--------------	----	----	----

THEN

D

THE

THE Service must be according to the Distance of Miles, so that here I must leave a Blank, } *l. s. d.*

IF the Plaintiff is instructed by Counsel, as he may be, I hope the Honourable House wont allow a Serjeant less than a Guinea, } *or or 90*

THE Hall-Keeper, who takes care to provide Candles and every Thing necessary for the Seat of Justice, must have something, but here they shall have a Blank, }

AFTER the Judge has heard the Cause, he is to make his Decree, which must be reduc'd into Writing; and the same ought to recite the Substance of the Complainant's Demands, what the Defendant pleaded, and what was given in Evidence, which are the Foundation of the Decree: And this cannot be less, supposing that the Bill be fifteen Folios, than fifteen more, because the Evidence given on both Sides must be specifically alleged

ged in the Decree; or how shall the Judge of the Cause on the Appeal be able to determine whether the Judgment was right, or no? For I apprehend that the Appeal here means a Resort from the Judgment of the Judge who tried the Cause on the said Bill, to the Judges at the next Assizes on the Face of the Proceedings, *viz.* the Bill, Answer, and Evidence given on both Sides; and this Appeal to supply the Place of a Writ of Error and special Verdict, both which admit the Facts to be as the Plaintiff hath charged, and the Debt to be sufficiently proved: But in the one Case, that the Proceedings are erroneous; in the other, the Jury, who have found the Facts proved, and being ignorant of the Laws, leave it to the Judges to determine the Matters of Law arising from the Nature of the Evidence. But if by this Appeal is meant that the Matter in Controversy, which hath been tried in this summary Way, shall be heard over again by another Judge, a Jury, and Evidences upon Oath, of the same or other Facts, which perhaps the Plaintiff and Defendant had since the

first Trial discover'd, then it is, in other Words, no more than a Liberty to either Party, after one Trial in a summary Way, and after they have both carried their Witnesses before a Judge at one Assizes, to come again at the next, and have the Cause tried as at Common Law by a Jury. This surely can never be; for if it is to be so, it will be against a fix'd Rule and Principle of Reason, (I wont say of Law, since that's at present in Disgrace,) that a Man shall prove his Demands twice in a Court of Justice, when he has fairly and legally been heard before. Besides that great Inconvenience, what Perjuries will hence ensue? Have not we seen in a Trial by a Jury where Witnesses have lain perdue to observe wherein those that went before were defective, and though they knew no more of the Matter than the former, have clinch'd the whole Point of the Case with as gross a Perjury as possible; and this from a Moment's Observation? What will they do now, when they have six Months Time to consider and be inform'd what is necessary to be sworn at the next Assizes on the Appeal? So that therefore I take it for granted,

granted, that this Appeal must certainly be from the Judgment of the Judge who tried the Cause by Bill, upon the Record of the Proceedings. And that seems to be the Meaning of the Authors of this Bill, where they say, that if either Party thinks himself aggriev'd by the Decree, Judgment, or Order of the said Judges, &c. to appeal forthwith to the next Judges of Assize; so that the Injury suppos'd to arise from the first Decree, is from the Judgment of the Judge, and not from any Hardship the Parties have received from the Want of, or the contending Party's having contradictory Evidence. And this Decree must, as I before observ'd, take in all the Evidence on both Sides, and contain that and the decretal Part of the Decree.

THIS must be drawn up;	l.	s.	d.
and supposing it to contain	}	01	00 00
thirty Folios, I dare say the			
Honourable House wont al-			
low less for it, than eight			
Pence <i>per Sheet</i> , which			
comes to			

THIS

THIS Decree must be
 signed by the Judge; and he
 ought to have a Copy by
 him, to see that his Judg-
 ment is not called in ques-
 tion : Upon a Record vary-
 ing from his Judgment, and
 supposing his Clerk is to co-
 py it, I hope he will not be
 allowed less than four Pence
per Sheet, which comes to
 ten Shillings.

l. s. d.
 } 00 10 00

THIS Decree must be en-
 rolled; for, I think, it is part
 of this Bill, *That this Court*
shall be a Court of Record;
 and for the Enrollment we'll
 set it at,

} 00 10 00

EACH Party to be sure
 will have a Copy of this
 Decree, which we'll likewise
 set at,

} 00 10 00

THEN there's the Execution of this
 Decree, the Sheriff's Poundage, which
 varies according to the Debt.

So

So here ends the first Trial; and as either Party has Liberty to appeal without shewing any Reason for it, there will scarce any Body be determined by the Judgment of the first Decree; especially the Defendant, either for Delay, or not being satisfy'd with the Determination of the Judge, will generally appeal; so the Trial upon that Appeal will be added to the former Expence.

AND when the Blanks that I have here left for that Purpose, are filled up, and added to those the Honourable House of Commons have left in their Bill, which besides a great many incident Charges that are yet unthought of, and will be found absolutely necessary when this Law comes to be reduced into Practice, as there will be many more Requisites necessary between the Complaint and Recovery of the Debt, than are mentioned in this Bill, I am satisfy'd that the Expences will, and I leave it to any Man of Reason to judge, whether they will not be far greater by this new-invented Method of proceeding, than by the ordinary Proceeding at Common Law.

AND

AND having gone so far as I intended to maintain my first Proposition, as to the Easy Way of Recovering Debts with respect to the Expence, I beg Leave to make this Observation upon the End and Purpose of the Bill; which Bill, though I dare say it is intended for the Benefit and Advantage of the Society who are to be governed by it when made a Law, yet I hope to make it appear, That were it possible it could produce its Effect, by making the Expence of a Suit to be very inconsiderable, yet even that would introduce a total Destruction of the Cement of our national Commerce within ourselves ; and if so, that Regard alone is sufficient to prevent this Bill's passing into a Law.

A DEBT arises from the Transmutation of one Man's Property into the Hands, Possession, and Ownership of another, or by some Labour, or Benefit done for another, without any immediate Satisfaction.

AND

AND he to whom that Property is thus repositied on Credit, whether by Contract exprefs or imply'd, and he for whom any Business or Labour is performed, being, on a Confidence that he will render Satisfaction for the same, is a Debtor; which Satisfaction if he refuses to make, he ought to be compellable by some positive Law.

AND, if that positive Law creates an Expence to that Person who is the Debtor, who, inasmuch as a Man's not performing his Contract, or not paying his Debts, is an Offence, I call an Offender, that Expence is then become a Punishment where it ought to be inflicted, and there's no Injustice arises from the Nature of this Expence but to the Offender.

IF this Expence be somewhat considerable, as it really is, then it is a Means to excite the Debtor, when he is legally demanded to pay his Debt, to make all the Speed he can so to do, to prevent the Expence which will naturally arise if he trifles any longer; and that this is

E

the

the Case, there is demonstrative Testimony to any one that will give himself the Trouble to make an Inquiry.

FOR the Purpose; in the Court of *Common-Pleas*, last *Easter* Term was Twelve-month, there were sued out into *Norfolk*, which is a pretty litigious County, 210 Writs, and of all those no more than 10 ever came to Judgment; and of 535, which were sued out the *Trinity Term* following, but 27 ever came to Trial, and but 89 Judgments by Default.

IN *Oxfordshire*, last *Easter* Term was Twelvemonth, 141 Writs were sued out, and but 11 Judgments by Default of that Term; and of the Term following, which is an issuable Term, 282 Writs were sued out, but 38 Judgments signed by Default, and but 12 Causes tried at the Assizes. These Things being undeniably true, it plainly appears, that for the Generality, as soon as ever the Debtor is served with Process, inasmuch as he is apprehensive that if he does not very soon satisfy the Plaintiff's Demands, he will be run to Expence; to prevent which, he perhaps immediately flies to Frugality, or to a
more

more observant Scrutiny into his Affairs, and thereby raises Money, pays his Debts, and no other Injury ensues, and this Man made honest from the Fear of Expenditure only.

Now let us consider whether this Expenditure which the Offender who breaks his Contract is put to, ought to be made inconsiderable, and what will be the Consequence.

WE will suppose that the Time appointed for Payment of Money for Goods which a Man hath bought, was the third Day of *August*, being a Week or a Fortnight, perhaps, after a Summer Assizes in that County; instead of paying for which Goods, this Man refuses or shuffles, pretending he has it not then to pay; nay, we'll go further, and suppose that the Creditor is so good as to give him till the first Day of *September*; at which Time the Debtor not paying his Debt, the Creditor files a Civil Bill, the Debtor is warned by Summons to appear at the next Assizes, which will be the following *March*, six Months after the Man has

been served with a Summons ; if the Expencc that the Debtor will be put to be very small, will not that encourage this Debtor to keep the Money in his Hands till another Affizes? Which he may do by lodging his Appeal, and thereby the Creditor is kept out of his Money ten Months in the whole ; at which Time the Creditor, rather than to have the Trouble of going to the Affizes, will choofe to lose his Debt, and thereby save Money in his Pocket. So that here is a Way carved out for a Country Trader to enrich himself by Fraud and Rapine; for 'tis but dealing with a Number of wholesale Traders in *London* for Goods under the Value of ten Pounds, and he is sure they will all be content to lose their Money for their Goods, rather than give him any Trouble ; since, if they do, the Debtor need but move ten or twelve Miles off into another County, and then he will be as safe as if he went into *Fance* or *Holland*.

I AM sensible, that the Multitude of Grievances which have lain under the Consideration of the present Parliament
to

to redress, was the Reason that all the Consequences of this Bill have slipp'd their Observation ; for there's no Man, let him be never so much tainted with Party or Faction, but must confess, that the Welfare of this Kingdom has been their chiefest and constant Care : But if there be any Person on whom the Reports of Sense make no Impression, and is thereby induced to think otherwise, let him turn his Eyes on the many wholesome Laws that they have lately made, and their sedulous Inspection into the Gaols and Dungeons, and their great Zeal and Success in justly punishing the Instruments of Cruelty and Tyranny.

So careful have they been of the Weal and Benefit of the Kingdom, that they have already made a Law, to prevent frivolous and vexatious Suits ; and no Man alive can think they would considerately and advisedly make another Law, which will create them.

THEY did not perhaps apprehend, that Persons of litigious Spirits have been deterred from bringing little paltry Actions,

tions for involuntary Trespasses and trifling Assaults, by the very Expence that would attend them ; but now every petulant Peasant will lade the Judges with Civil Bills, and put his honest Neighbour to the Expence and Trouble of a Suit, which will cost the Suitor little or nothing to prosecute.

Now having, I think, sufficiently made it appear, that the Expences attending a Suit by this new Method propos'd, to be far greater than by the ordinary Proceedings at Common Law, I shall proceed to my next general Proposition, *viz.*

THAT the Proceedings by this new Method will inevitably admit of more Delay to the Suitor, than the Practice of the Common Law would by any Means admit of.

BUT before I do this, it will be necessary for me here to shew what Delay the Common Law admits of to the Suitor.

AND

AND here it is to be considered, that there was a great deal more Pretence to redress the Grievances pretended to be redressed by this Bill a while ago, than there is now.

For the Judges, both of the *Common Pleas* as well as *King's Bench*, have lately (yet before ever this Bill was so much as thought of) made a great Alteration towards lessening the Expences, as well as preventing the Delay that before used to occur by the Nature of the Practice, and the Means made use of by an Attorney; who, at the Desire of his Client, would save him from being pulled in Pieces, as an Execution might do, while he knew any Part of the Practice could prevent it. And for the Honour of both the Courts, and especially of the Lords Chief Justices of each Court, who, I am inform'd, were the Instruments to effect it, I beg leave to mention a few Instances.

By the Law, as it stood before, when the Defendant was sued, he had a Right
first

first to crave Oyer (which is to have a Copy) of the Original to the Writ of *Capias* on which he was taken; and the Plaintiff was oblig'd to give it him before he could compel him to plead; and when he had so given it him, the Defendant would plead, *viz.* in Abatement, some dilatory Plea, by which the Plaintiff was generally turned over till the next Term. And another Inconvenience arose from the giving this Oyer, *viz.* as if between the last Day of *Trinity* Term, and the first Day of *Michaelmas* Term, a Person had a Cause of Action against another, and sued him by special Writ, so as to compel him of *Michaelmas* Term to appear and plead, that the Plaintiff might have Judgment that Term; the Defendant by craving Oyer of the Original, and setting it forth, which was obliged in that Case to be dated in *Trinity* Term, would make it appear to the Courts the Date of it was before the Cause of Action, and then the Plaintiff was put to the Expence of a new Writ. And if the Plaintiff sued by a common *Capias*, or *Latitat*, then the Defendant had an Imparlance to the next Term

after

after the Writ was returnable, which created as much Delay to the Plaintiff, as this new Method prescrib'd by the Bill would introduce.

BUT now to the great Honour and Praise of both the Courts; be it here inserted and imprinted in the Minds of all Lovers of Justice, that to prevent Expence as well as Delay,

THE chief Justice of the Court of Common Pleas does all he can to discountenance Pleas in Abatement, which don't go at all to the Merits of the Cause, and will not compel the Plaintiff to give Oyer to the Defendant of his Original, unless in some special Cases, upon Application to the Court upon Oath of the Reason of requiring it; which Reason, if it is such as plainly shews the Plaintiff ought to be put to a new Writ, they will then, as they ought, of Right to grant it.

AND to prevent Delay, which Impar-
lances before admitted, the Court of *Common Pleas* hath lately made a common Writ to have the same Efficacy as a spe-
F cial

cial Writ, by compelling the Defendant to appear and plead of the same Term, as if it had been special; so that now few or none commence any Suit by special Writ, which costs a great deal more, than a common one with equal Advantage. The chief Justice of the Court of *King's Bench* hath also made a *Latitat*, which to the Suitor costs but ten Shillings, to have the same Force in that Respect (*viz.* of compelling the Defendant to appear and plead of the same Term) as a special one, that costs four Times as much to the Suitor; so that now it is very difficult to delay the Plaintiff at all, but he has Trial, Judgment, or Execution, of the same Term that the Writ is returnable.

BUT that it may be objected, That it is still in the Defendant's Power to delay the Plaintiff by a Writ of Error. True it is, that a Writ of Error may be brought; but when you consider how few Writs of Error are brought, 'tis hardly worth guarding against the Objection: But if a Writ of Error is brought, and 'tis after a Verdict, there

there must be Bail, who are liable to pay the Money ; and the like if Judgment in Debt on a Bond for Payment of Money, &c. and other Actions of Debt mention'd in the Act of Parliament, which provides for Bail on Writs of Error; so that the Plaintiff is no Ways injured by the Delay. And perhaps it would be for the Benefit of Suitors, if the Defendant was compelled to find Bail on a Writ of Error in every Case, and then there would be no Pretence to say, the Plaintiff by the Proceedings at Common Law is subject to any Delay.

Now let us examine this speedy Way of recovering small Debts, prescrib'd by this Bill.

THE Plaintiff applies to an Attorney five Months before the ensuing Assizes to prefer his Bill for the Recovery of a small Debt ; the same is filed, and thereon a Summons issues for the Defendant to appear at the next Assizes, to answer the Matters complained of in this Bill ; for 'tis not to be supposed that the Creditor is to stay five Months before he

fues the Debtor. After five Months spent, the Plaintiff brings his Witneſſes to prove his Debt or Demands. The Defendant controverts theſe Demands, produces his Witneſſes; both Sides are heard; The Judge of the Affize decrees for the Plaintiff. The Defendant, to procraftinate the Plaintiff's having any Execution on ſuch Decree, has no more to do than to enter into a Recognizance to ſtand the Determination of another Decree upon the Appeal; or if he don't chuſe to enter into ſuch Recognizance, 'tis but paying down ſuch Coſts as the Judge thinks fit, (for theſe are the Words of the Bill,) and he may chuſe to have the Cauſe heard at the next Affizes by a Jury: So that here are eleven Months cut out for Delay to the Suitor, and the Complainant no nearer the Recovery of his Debt than before; for even then, ſhould the Defendant take it into his Head to remove out of the Jurisdiction where the Cauſe was determined, the Endeavours of the Suitor to recover his Debt are thereby render'd uſeleſs. And by the ſame Reason that he may prevent the Plaintiff from recovering his Debt in that

that Jurisdiction where he commenced his Suit, and putting him to a new Application in another Jurisdiction to whence he is removed, he may lead the poor Suitor a Dance thro' all the Counties in *England*. This one Inconvenience surely, if rightly consider'd, is of itself sufficient to prevent this Bill's passing into a Law.

THE former Inconvenience which arises from this new Bill, I hope, will be thought sufficient to prove my last Proposition to be true, with respect to the Delay; and that was such a one as the Suitor in the County where the Defendant lives will think hard enough: But this I am going to mention, tho' it arises partly from the Reason of the former, yet it carries in it a much more dangerous Consequence.

THE Country People in general are supplied with Necessaries either from this City of *London*, or from principal Towns and Cities within each respective County, but principally from *London*; and every body who is any way conversant

fant with Matters of Trade, knows that
 the Merchants and Wholesale Traders
 here, supply their Chapmen in the Coun-
 try; from whom the poor People are
 more immediately supplied, generally up-
 on Credit. And the Reason of that Cre-
 dit given these Chapmen in the Country
 by the Wholesale Trader, is partly be-
 cause they make good Payments here
 with them, and partly from the Ease
 they had before found of compelling
 People to pay that had bad Principles,
viz. by laying their Action in *London*,
 and having a *Testatum Capias* into the
 County where the Debtor lived, by
 which Means the Cause was tried here
 in *London*. The Wholesale Tradesman
 had nothing to do but to prove here in
 Town, where his Servants are, who are
 to give Evidence that the Goods were
 delivered to the Debtor's Order, the
 Tradesman had a Verdict, and Satisfaction
 for his Debt: But now, should this Bill
 pass into a Law, what Tradesman will
 send down any Goods into the Country,
 when he knows, should there be any
 Dispute about them, or the Debtor be of
 a bad Principle, and not willing to pay
 till

till compell'd by some Law or other?
 that he must go down perhaps an hundred Miles off to prove his Demands, and carry two of his Servants to give Evidence of the Sale and Delivery? and after all this Trouble must go down again at the ensuing Assizes, being six Months? and if the Appeal is to be upon full hearing Evidence over again, then he is to carry down his Witnesses again, who before that Time are perhaps dead, or gone to Sea, by which the Suitor's Debt is lost, and he forced, after all, to pay Costs, because he cannot make out his Demands upon the Appeal? This will infallibly destroy all Trade, Credit, and every Thing that is valuable in any Society. The Delight and Love of doing good, and serving one another, will then be no more.

THERE is another Inconveniency, which I beg Leave to call an Absurdity, that arises from the Method proposed by this Bill, with respect to Appeals.

THAT

THAT is under Consideration to whom the Appeal is to be made, to any next Judge of Assize within the same Jurisdiction; and I beg Leave to ask, Whether that is not an equal Jurisdiction, with respect to the Court, which is to try the Cause; and if so, that carries in it as great a Contradiction in Terms as can be required, to prevent this Bill's passing into a Law.

THE Common Law, which is founded on the Experience of Ages, knows of no such Term as an Appeal, in the Sense intended in this Bill; for the only Appeal known by the Common Law, is an original Accusation, as much as an Indictment. 'Tis true, indeed, that the Civil Law, which, as we hope, will never be prefer'd by *Englishmen* to the Common Law, has Appeals somewhat resembling that mentioned in the Bill; but I never heard of such an Absurdity in this Law, as to suffer an Appeal from a Judge presumed to be of superior Abilities, to another justly supposed to be of inferior: But it is an
even

even Chance, that this may be the Consequence of the Appeals in this Bill ; for let the first Cause be determined by a Judge of never so great Abilities at the first Assizes, it must be reheard at the next Assizes upon an Appeal before the next Judge, let his Capacity be never so unequal to that of the Judge who try'd the first Cause. But I must confess, that even this is more plausible, than to have the same Judge rehear his own Judgment in the Hurry of the very same Assizes, when he can have no Opportunity coolly to reconsider the Matter, and to search Books and Presidents for his better Information.

ONE Inconvenience I beg Leave to mention more ; but were I to go through all that will inevitably ensue, I should swell this Treatise up to a Folio Volume ; but this must not escape me, because my own and the Liberty of every *Englishman* is concerned therein.

SHOULD this Bill pass into a Law, the Judge who tries the first Cause on Bill or Petition, supposing there be afterwards

an Appeal, tries the Cause from his own Admission of what Evidence he thinks fit ; and when afterwards there is an Appeal, if the Judge who tries the Cause again on the Bill of Appeal judges from the Record itself, and gives a Decree in Affirmance of the former, or if he is to admit Evidence to be re-examined, which can scarce be, and still affirms the Decree of the former Judge, there is the *Nepus ultra*. This is final ; and if the Judge hath admitted Evidence, which he ought not to admit, the Party injured is without Remedy : When, by the Law of *England*, if the Judge who tries the Cause, admits such Evidence as by Law ought not to be admitted, the Party grieved may file a Bill of Exceptions against the Judgment of the very Judge ; and that is to be solemnly argued by the Courts above, which now by this Bill cannot be done ; so that there is one Part of the Liberty of the Subject pared off at once. And though the Intentions of this Parliament are for the Good of the Subject, yet future Parliaments, should we teach them the Way, by abolishing the Common Law, the
Right

Right of being tried by Juries, and the Method of Refort to a superior Court of Judicature, may, without any great Difficulty, pare the Liberty of the Subject to the very Roots.

I would beg Leave to add one Word more, as an *Englishman*, concerning the Danger which may accrue to the very Fundamentals of our Liberty from Innovations of this Nature, upon the establish'd Method of Trials by Juries. Our Ancestors took it to be the most valuable Part of the Constitution, that neither their Lives, Liberties, nor Properties, could be taken from them without the Consent of their Peers; and this valuable Privilege, which our Ancestors purchased with the Price of their Blood, I hope, shall never be easily parted with.

THE present Bill indeed only deprives us of this Privilege with respect to Causes of Ten Pounds: But, how far it may be a President hereafter, to carry it to the highest Sum, and even to criminal Causes, no Man can foresee.

AND I should be extremely sorry, that in After-ages, ill-designing Men, that may aim at a total Subversion of our Constitution, should have a President from a Parliament, which means nothing but the securing the Ease, Liberty, and Property of the Subject.

It is a fundamental Principle of the Common Law, rather to suffer a Mischief, than an Inconvenience, that is, rather to suffer a Damage to a particular Person, than to the Publick: And whether it may not be better for the Nation in general to suffer the Mischief of having an obstinate Man, now and then, ruin'd by standing out a Law-Suit against the Advice of Council, and thereby saddled with Costs he cannot pay, which yet the Wisdom of the Nation may easily prevent upon the Footing of our old Laws, rather than to make so dangerous an Experiment, of which so very ill an Use may hereafter be made, and which is far from being a clear and certain Remedy against the Mischiefs intended to be redress'd by it.

IT must be confess'd, that our Laws have the Fate of all other Things contrived by Man, and must be attended with some Defects; but I assure myself that they will be so highly valued, by a Parliament so zealous for the Good of the Publick as the present, that so great an Innovation will not be introduced without the deepest and coolest Consideration of the fatal unknown Consequences that may ensue upon it, without the Advice of those, who by their Studies and Experience have made themselves the greatest Masters of it, and who have been always esteemed Men of the greatest Wisdom, Probity, and Honour.

AND having here assigned the Loss of the Liberty of the Subject as an Objection against passing this Bill into a Law, I shall beg Leave to intimate, that if this Bill should pass into a Law, one Branch of the Jurisdiction of the House of Lords will be thereby taken away, at least render'd useless. The House of Lords is the *Derniere Resort*, to which the Subject is intitled to apply,

apply, to have the Judgments of the Courts at *Westminster* corrected ; and, though this Parliament have limited the Sum to ten Pounds, for which the Cause is to be tried before this new Court of Justice, yet future Parliaments may think it a Reason for them to carry it to any Sum whatsoever ; and then the Prerogative of the Court of the House of Lords will be rendered useless, because the Determination of the Judge and Jury on the Appeal is appointed to be final and conclusive.

THERE are two more Inconveniencies which I cannot omit, for the sake of those whom they concern, *viz.*

The Crown, and the City of London.

AND as to the first, it will be necessary for me here to assert one Thing which I have only from Information, and yet what would cost the Legislature very little Trouble to look into the Truth of it, *viz.* That should this Bill pass into a Law, the Revenue must be lessened at least 100,000 *l. per Annum* : Too much

much to lop off at one Stroke, when as yet there seems to be no Reason for it. Out of every Cause, one with another, accounting for those Causes that are not tried, those on which Writs of Error are brought, and others in which Affidavits and Rules of Court are made, which are on a double Six-penny Stamp, I am satisfied it can't be much less; I rather think it a great deal more than the Sum I mention above. But however, if the Stamp-Duties be thought an unnecessary Burthen on the Law, and that it is a very disproportionate Charge, that the same Stamps, which amount to almost thirty Shillings in a Suit, should be imposed on a Demand for five Pounds, as for five hundred Pounds, I cannot but confess there is a great deal of Reason to take that into Consideration; and therefore, if the Parliament would be pleased to take off the Stamp-Duties from the Law on all Sums under ten Pounds, that would be very right, and claim the universal Consent of the whole Kingdom.

IN the next Place, this Bill should it pass into a Law, will crop off another Branch

Branch of the Revenue of the Crown, which may seem inconsiderable at first, but more closely adhered to, will be found to be of no small Consequence.

WHEN Suits are commenced by Writs, a Copy is to be served on the Defendant in the Country; the Writ is sent down, an Affidavit of the Service of that Copy comes up in another Letter; another goes down with a Writ of Inquiry, if there is Judgment by Default; if the Cause is tried, another with a *Venire Facias*, to be returned by the Sheriff, another with a *Habeas Corpora*, and perhaps with the Record itself; besides a Number of Letters backward and forward, requiring and giving an Account of the Progress of the Cause.

THE last Inconveniency that I shall observe, is the Injury that the City of *London* and the Suburbs would suffer, should this Bill pass into a Law.

THE four Terms in the Year are periodical Times, wherein the Business of the Law is transacted in *Westminster-Hall*:

Hall: At two of these, called the issuable Terms, the Country Attorneys come up to Town, to see their Business well managed against the ensuing Assizes; and where there are Causes of any Moment, their Clients generally come up with them. Then this causes a Circulation of Money, a Briskness of Trade in this City and Suburbs, where there are Thousands of Families that are entirely supported by those Intervals from Poverty, called the *Terms*; and you may find 'em distinguished, as well by their own Wants, as by the Almanack. Should this Bill pass, the Clamours of the City of *London* and Suburbs will be much more vehement, if it can be, to repeal it, than those of the Requirers that press this Bill to pass into a Law.

AND now I have done with all the Inconveniences that I think necessary here to mention, I beg Leave to make a short Reflection upon the Earnestness there seems to be in the Well-Wishers to this Bill, that the Law should be new modelled.

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THIS

THIS Law, which I call the Common Law, hath been handed down by our Ancestors for above a thousand Years : A Law which the great and learned Sir *John Fortescue*, the great Lord *Bacon*, and my Lord *Coke*, and I could mention Numbers of the wisest Heads this Nation could ever boast off, that have with one Heart and one Voice highly extoll'd the Excellency of the Common Law of *England*. Observe what my Lord *Coke* says ; *That of all Laws, says he, I speak of human Laws, these (meaning the Common Laws of England) are most equal, and of greatest Antiquity, and least Delay, and most Beneficial and Easy to be observed.* And he further tells you with an Orator's Confidence, and a good Man's Truth, *That he could defend them against any Man that is not malicious without Understanding, and make it manifest to any of Judgment and Indifference by Proofs pregnant and demonstrative, and by Records and Testimonies luculent and irrefragable :* But, says he, *Sed sint quidam fastidiosi qui, nescio quo, malo affectu, oderunt artes*

artes antequam pernoverunt. And, as Quintilian wisely observes; *I account Arts happy, says he, if Artists only judged of them, because they will not only value them, but not undervalue them, for some little adjunct Defects.*

AND here we may judge very safely what may be the Consequences of making Innovations on the Common Law, *viz.* from Experience: In the Year 1650, when the Parliament was angry at the Grandeur and Dignity of the Law, and being ignorant of the Language in which it was writ, and the Proceedings being in *Latin*, to which they were Strangers, the Clamours of the Members ran so high, that one insisted upon pulling down the Pride of the Law; another with more Temper, yet equal Prejudice, with an oblique Phrase, only desired it might be stripped of its Cloak, by turning it into *English*; which they accordingly did. And what was the Consequence? *Hinc ille Lachrymæ!* The Plainness of its Coat induced the poor Country Men to box it about, and every one thought he had immediately made himself Master

of it; and then Tooth and Nail, when the first Opportunity offer'd, ran into a Suit of Law to prove his Ignorance, at the Expence of his Ruin. This Vein of Folly ran through the whole Kingdom; and every sanguine poor Mortal, that had got a little Money, and less Wit, who else would have lain quiet, and preserved the Peace of the Kingdom, exhausted all his Substance, by contending with his Adversary in *English* Law.

AND you may see what sort of Persons they were in those Days, that petition'd for the Alteration of the Common Law, by a Petition printed in the Year 1650, entitled, *A Petition dedicated to the Committee of Parliament, for Reformation of the Courts of Justice and Proceedings at Law*. And another, entitled, *Proposals for the Alteration of the Law, by a Petition of one Robinson*, who, whether he was a Member of Parliament, or no, I know not; but it seems he was a North Country Fox-Hunter. And the last being more extraordinary than the former, inasmuch as it hath all the Ingredients necessary to an Enemy
of

of the Law, I beg leave to recite the
Exordium of the same.

“ THE Persecution and Oppression of
 “ our late Kingly Governors, with their
 “ House of Peers, and Lordly Bishops,
 “ though at first not well apprehended
 “ by great Numbers, whom by Court
 “ Preferment, corrupt Education, or
 “ otherwise, they had seduc’d, is now
 “ through the Christian Liberty of try-
 “ ing all Things, become so clearly dis-
 “ cernable, as that even the greatest Part
 “ amongst us, and all round about us,
 “ do justify us in the Judgment we have
 “ executed upon them, both Root and
 “ Branch. The Observation whereof
 “ ought to be no small Inducement unto
 “ the same Spirits, whom God made
 “ instrumental to execute his Vengeance
 “ upon such Enemies to true Godliness
 “ and Freedom, to cast their Eyes about
 “ them, and spy out what Work is yet
 “ remaining to be done by them, before
 “ these Nations can possibly enjoy so
 “ great a Good as the Lord may be pre-
 “ sum’d to have intended to them, by
 “ their Expence of so much Blood and
 “ Treasure. “ IT

" It will doubtless be easily perceiv'd,
 " that the Lawyers, the Men of the Law,
 " the whole Tribe, from the Judges to
 " the Prison Door-Keeper (though some
 " of them, as to their personal Actings,
 " are not so blameable as other some) in
 " their own Sphere of *Westminster-Hall*,
 " have not only been mischievous and
 " destructive Canker-Worms, or *Pha-*
 " *roah's* lean Kine, unto these Nations,
 " but have ever been those mercurial
 " Spirits and Instruments, civil Tormen-
 " tors and Executioners, to carry on and
 " practise whatsoever our persecuting
 " Governors, with their Peers and Lord-
 " ly Bishops have been executing.

" It was this Tribe that was so ready
 " and willing to do their Drudgery, that
 " they might be maintain'd in buying
 " and selling the Nation over and over,
 " as often as they pleased, at one Term
 " or Trial the Plaintiff, at another the
 " Defendant; then back again; then for-
 " ward; and all according to good Law
 " or Equity. And besides all this,
 " though they seem to have but one

" chief

" chief Shop at *Westminster-Hall*, yet
 " there are a few other Stalls erected for
 " them in the Circuits, and their own
 " private Ware-Houses at Home ; and
 " this one Tribe is thought to make a
 " Shift to gain or reap one fifth Part of
 " the Profit of the Nation."

As to the other Petition in 1650,
 though the Design and Intention of it
 was founded perhaps on none of the best
 Principles, yet the Scope of this Petition
 carries in it some Colour of Truth and
 Integrity ; and whoever would endeavour
 to undermine Truth, must always
 (to expect any Success) do it with some-
 thing representing it. In this Petition
 are these Words :

" INASMUCH as a good Frame or
 " Constitution of Justice, less apt to
 " slide into a State of Degeneracy, is
 " much better than a good Judge, who
 " can be no longer good than while he
 " is true to Rules, nor can his Good-
 " ness be assured to Succession ; and that
 " Constitution of Court is the best that
 " leaves least to the Discretion of the
 " Judge

“ Judge, as that is the best Judge that
 “ leaves least to himself; he further in his
 “ Petition wishes that there may be
 “ no Judge in *England* a Judge of
 “ Facts.”

IN the next Place I shall shew what
 Veneration and Esteem our Ancestors paid
 to the Common Law, and even Kings
 and Princes thought it their Interest to
 preserve inviolable.

FIRST, observe what Advice the great
 Sir *John Fortescue* gave to Prince *Ed-
 ward*, (Son to *Henry VI.*) to whom he
 was a Tutor or Preceptor.

THAT good Man was afraid lest the
 young Prince, by being abroad, might
 decline the Love of the Common Law
 of *England*, and admire the Law of some
 other Country; and foreseeing the evil
 Consequence that might attend it, inas-
 much as the People of *England* love and
 admire nothing more than their Laws,
 should, when they saw their Laws alter'd
 and new-modelled, withdraw their Alle-
 giance from him, he therefore gives the
 Prince

Prince this wholesome and cordial Advice,
viz.

“ BE it far from Thee, Royal Offspring
 “ of my Sovereign, to despise or make
 “ light of the Common Laws of this
 “ Kingdom, which you are like to go-
 “ vern; for thereby you’ll make to your-
 “ self more Enemies than by any other
 “ Means whatsoever; for they are
 “ Laws, says he, that your very read-
 “ ing of them will make you in Love
 “ with Justice.”

AND we may see what Respect King
James the First paid to the Common
 Laws of *England*, and how much he
 himself thought it his Interest and Duty
 to preserve them in the same Frame and
 Manner that they were before he came
 to them, as by the Preamble of an Act
 of Parliament of the first of his Reign,
 Chap. 2. *viz.* “ The fundamental and
 “ ancient Laws, Privileges, and good
 “ Customs of this Kingdom, do not on-
 “ ly preserve the King’s legal Authority,
 “ but the People’s Security of Lands,
 “ Livings, and Privileges, both general
 I “ and

“ and particular, and are thereby pre-
 “ served and maintained; and by the
 “ Abolishing or Alteration of which it
 “ is impossible but that present Confu-
 “ sion will fall upon the whole State
 “ and Frame of this Kingdom.

AND I shall make but one Observation
 more ; which is on one of the Speeches
 of the same King to his Parliament in the
 following Words, “ For a King of *Eng-*
 “ *land*, says he, to despise the Common
 “ Law, is to neglect his own Crown ; and
 “ I think, if the Civil Law should be
 “ taken away, it would make an Entry
 “ to Barbarism in this Kingdom, and
 “ would blemish the Honour of *Eng-*
 “ *land*”. And after the King enlarges ;
 “ My Meaning therefore is not to pre-
 “ fer the Civil Law before the Common
 “ Law, but only that it should not be
 “ extinguished ; and yet so bounded, I
 “ mean, to such Courts and Causes as
 “ have been in ancient Use, as the
 “ Ecclesiastical Courts, Courts of Ad-
 “ miralty, Courts of Request, and such
 “ like, reserving ever to the Common
 “ Law to meddle with the fundamental
 “ Laws

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“ Laws of the Kingdom, either concerning the King’s Prerogative, the Possession of Subjects, or any Questions, either between the King and any of them, or amongst themselves, in the Points of *meum* and *tuum* ”.

IF there be any Person angry with the Forms of the Law, let him consider that Forms are Prescripts of God in Nature, and of Nature to Policy, in Avoidance of Cousin. The *Jews*, the first People and Polity, had their Forms in all Things; as also the *Romans*: Observe *Tully* on that Occasion, *Fura & formæ de omnibus rebus constituta*.

AND these Forms, tho’ we look upon them as useless and superficial Things, which may *adesse & abesse sine interitu subjecti*, yet ought not to be innovated, or forcibly enter’d upon, without great Consideration, because they couch under them great Mysteries, which are necessary to be cherished for the Advantage they give to the more essential Parts of Truth and Policy.

THERE is one Thing more, that I beg Leave to mention; and the Reason for it is, Because it may appear, that tho' I am so tenacious of preserving the Common Law of *England*, and have it in great Esteem, yet I cannot at the same Time but confess, that there are some Tares grown up by Time, which choak the Wheat; and several Corruptions have crept into the Practice of it, especially as to the unjustifiable Increase of extortionable Fees. 'Tis that, and that alone, which makes the Law so expensive and burthenfome to the People. And I am of my Lord *Bacon's* Opinion, who was for pruning and grafting the Law, but not for plowing it up, and planting it again; for that, says he, is a perilous Innovation.

IF the Honourable House of Commons would let the Law run in the same Channel as it now is, and give me Leave, I would lay before them such a Scheme for cleansing it from the Filth and Quickfands caused by Time and the Corruption of Man, that by cropping
off

off those Fees which are actually unnecessary and superfluous, the Law would be made pure, the Subject eased, and by passing such an Act, the Names of the present Parliament would be made memorable to all Posterity.

AND that the Common Law of *England* may be inviolably preserved, as to the Law itself, is my hearty Wish; and I shall end this Treatise in the Words of *Tully*, who apply'd it to the Commendation of the Civil Law, as I beg Leave here to do to the Common Law;

*O rem præclaram! vobisq; retinendum
Judices.*

F I N I S.



Of those Fees which are actually made
 either in England or the Law would
 be made good the 2d part of the
 by the 1st part of the 1st part of the
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 responsible to all the

And in the Common Law of England
 and in the 1st part of the 1st part of the
 the Law is in my hands with and
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 of the 1st part of the 1st part of the
 members of the Civil Law, and I beg
 leave to do to the Common Law;

Of your Government, which is the



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